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Under Authority Conferred by 28 U.S.C. § 515

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) No. CR 08-164 MHP
Plaintiff,) STIPULATION AND [PROPOSED]
v.) ORDER REGARDING INITIATION OF
W. SCOTT HARKONEN,) TERM OF PROBATION
Defendant.)

The United States of America and the defendant W. Scott Harkonen, by and through their respective counsel, hereby stipulate and agree, and do jointly request, that this Court approve the lifting of the stay of Special Condition No. 2 of the defendant's term of probation. That special condition requires the defendant to complete six months of home detention. An order from this

STIPULATION AND [PROPOSED] ORDER
CR 08-0164 MHP

1 Court approving the lifting of the stay will allow the Probation Office to implement this portion
 2 of the judgment order. The assigned Probation Officer, Maria Ross, has requested that the
 3 parties obtain an order from the Court approving of the lifting of the stay. In support of their
 4 stipulation and joint request, the parties state as follows:

5 1. On September 29, 2009, the defendant W. Scott Harkonen was convicted of wire
 6 fraud at the conclusion of a jury trial. *See CR 240.*

7 2. On April 13, 2011, The Honorable Marilyn Hall Patel sentenced the defendant to
 8 a three-year term of probation and ordered him to pay a fine of \$20,000. The court also imposed
 9 several special conditions of probation, including that the defendant complete six months of
 10 home detention and that he perform 200 hours of community service. The court stayed the
 11 home-detention condition “until further notice — pending appeal in this matter.” *See CR 382, at*
 12 3.

13 3. The defendant appealed his conviction to the Ninth Circuit Court of Appeals. On
 14 March 4, 2013, a three-judge panel upheld the defendant’s wire fraud conviction in an
 15 unpublished *per curiam* opinion. *See United States v. Harkonen, 2013 WL 782354 (9th Cir.*
 16 2013).

17 4. The defendant filed a petition for rehearing en banc on March 29, 2013. The court
 18 of appeals denied that petition on May 7, 2013. The mandate was issued on May 17, 2013.

19 5. Defendant intends to petition the United States Supreme Court for a writ of
 20 certiorari, but does not object to the stay condition being lifted at this time.

21 6. Given these facts, the parties jointly request that the Court now approve the lifting
 22 of the stay of the home-detention condition. The defendant has now been on probation for more
 23 than two years. *See 18 U.S.C. § 3564(a)* (“A term of probation commences on the day that the
 24 sentence of probation is imposed, unless otherwise ordered by the court.”). According to the
 25 assigned Probation Officer, Maria Ross, the defendant has not served any of his six months of
 26 home detention. Lifting the stay of the home detention special condition at this time is
 27 appropriate.

28 7. Judge Patel retired from the court on September 30, 2012. Accordingly, the

1 parties jointly request that this matter either be handled by the duty district court judge in San
2 Francisco, or that the case be re-assigned to a new judge.

3
4 SO STIPULATED.

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6 DATED: June 12, 2013

BRIAN J. STRETCH
Acting United States Attorney

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8 _____/s/
9 KYLE F. WALDINGER
Assistant United States Attorney

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11 ALLAN GORDUS
Trial Attorney

12 DATED: June 12, 2013

SIDLEY AUSTIN LLP

13
14 By: _____/s/
15 MARK E. HADDAD
DOUGLAS A. AXEL
Attorneys for Defendant
16 W. SCOTT HARKONEN

17
18 **[PROPOSED] ORDER**

19 For the reasons stated in the parties' stipulation, the Court hereby orders that the stay of
20 Special Condition No. 2 of the defendant W. Scott Harkonen's term of probation is hereby
21 LIFTED. The Probation Office is ordered to implement that portion of the judgment order by no
22 later than July 1, 2013.

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24 IT IS SO ORDERED.

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26 DATED: 6/26/13


27
28 UNITED STATES DISTRICT JUDGE

STIPULATION AND ~~[PROPOSED]~~ ORDER
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